IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 403 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHRI HASMUKHBHAI S. MISTRY
Versus
THE STATE OF GUJARAT

==========

Appearance :
MR JB PARDIWALA for the Petitioner
MR AJ DESAI, ADDITIONAL PUBLIC PROSECUTOR for the Respondent

==========

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 08/09/2006

ORAL JUDGMENT

1. **RULE**. Mr.A.J.Desai, learned Additional Public Prosecutor waives service of Rule on behalf of the respondent.

At the joint request of the learned advocates, the

matter is taken up for final hearing.

2. The petitioner is before this Court being aggrieved by order dated 12.05.2006 passed by the learned Special Judge, Valsad below Exh.5 in Special (Corruption) Case No.66 of 2002.

The petitioner herein – original accused filed an application praying in paragraph No.14 that, “taking into consideration the contents of the application, on the basis of the charge sheet filed, Special Case No.66 of 2002 is required to be dismissed.”

3. After the matter is heard for some time, Mr.J.B.Pardiwala, learned advocate for the petitioner submitted that it is an admitted position that Prevention of Corruption Act got amended in the year 1988. He submitted that prior to 1988, it was 1947 Act, which was holding the field. He submitted that in view of this admitted position that the new Act came into force only in the year 1988, the charge sheet filed for the offences punishable under Section 13(1)(e) of the new Act, covering entire period from 1985 to 1988, is not in accordance with law.

He submitted that assuming for the sake of argument and assuming against one self, even if the petitioner is guilty for the period prior to 1988, he cannot be prosecuted under the new Act. He has to be prosecuted

under the old Act.

4. Though this aspect is mentioned in paragraph No.10 of the application, the prayer clause did not contain specific relief on these lines. The learned Judge taking into consideration the prayer clause as it is, dismissed the application.

5. Having heard the learned advocates, having perused the papers and having perused the provisions of law, this Court is of the opinion that it will be in the interest of justice if the applicant is allowed to file fresh application with suitable prayers and in case of necessity, separate applications with a direction that the same shall be considered by the learned Judge in accordance with law. Order accordingly. The revision application is allowed. Rule is made absolute.

At the request of Mr.J.B.Pardiwala, it is clarified that the learned Judge shall not get influenced by the order passed rejecting the application Exh.5 at the time of deciding the applications filed pursuant to this order.

(RAVI R.TRIPATHI, J.)

*Shitole